

Application No. 10/700,761
Amendment Dated November 14, 2008
Reply to Office Action of May 14, 2008

REMARKS

In the Office Action dated May 14, 2008, claims 1-3, 5-11 and 67-70 were examined with the result that all claims were rejected. In response, Applicant has amended claim 1. In view of the above amendments and following remarks, reconsideration of this application is requested.

Before turning to the rejections of record, Applicant would like to briefly summarize the amendment made to claim 1. Claim 1 has been amended to incorporate shear strength as well as the method of measuring shear strength therein. Support for this amendment can be found in the specification as filed in paragraph 0043 at page 10 as well as in paragraph 0065 at page 18 of the specification as filed. Thus, no new matter has been added to independent claim 1.

In the Office Action, claims 1, 2, 7, 8 and 67 were rejected under 35 U.S.C. §103(a) as obvious over Chen et al U.S. 6,271,278 in view of Inoue et al U.S. 6,893,715. Essentially, it is the Examiner's position that it would be obvious to modify the invention of Chen et al by incorporating the composition of Inoue et al therein. Further, claims 5 and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over Chen et al in view of Inoue et al, as applied to claim 1, and further in view of Dobreski et al U.S. 4,820,589. Claims 3, 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Chen et al in view of Inoue et al, as applied to claim 1, and further in view of Tuman et al U.S. 2001/0018110. Claims 68 and 69 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chen et al in view of Inoue et al, as applied to claim 2, and further in view of Mascarenhas et al U.S. 5,888,615. Finally, claim 70 was rejected under 35 U.S.C. §103(a) as being unpatentable over Chen et al in view of Inoue et al, as applied to claim 2, and further in view of Velazquez et al U.S. 5,614,297. In response, Applicant believes each of these rejections are primarily based upon a combination of Chen et al and Inoue et al, and therefore distinguishing over Inoue et al will overcome all of these rejections. Accordingly, Applicant has the following remarks.

The composition disclosed in Inoue et al provides a material capable of forming a sealant film or cap for a food container after being heat sealed in order to prevent the food from spilling out yet provide easy peeling properties to enable a consumer to peel the film or cap

away by hand. In order to accomplish this, Inoue provides a composition which includes an ethylene/α-olefin copolymer, a propylene polymer, and optionally an ethylene polymer (disclosed as composition (b)) to provide a balance between two desired properties, i.e. sealing strength and easy peel strength.

This is particularly demonstrated in the data contained in Table 1-B at column 14 of Inoue et al. The Examiner will see that Examples 1-B and 2-B are examples of the claimed invention in Inoue et al and Comparative Example 1-B and Comparative Example 2-B are films outside of Inoue's invention. The sealing strength is expressed in Newton's per 15 millimeter (N/15mm), and as the Examiner can see, invention Example 1-B has a sealing strength of 19.6 N/15mm which translates into 3,300 grams per inch. The sealing strength of invention Example 2-B is 24.5 N/15mm which translates into 4,124 grams per inch. Comparative Example 1-B has a sealing strength of 39.2 N/15mm which translates into 6,598 grams per inch. Finally, the Examiner will note that Comparative Example 2-B has a sealing strength of 5.7 N/15mm which translates into 959 grams per inch. Thus, of the four examples, only Comparative Example 2-B might be considered to fall within the scope of applicant's claimed invention because that formulation has a peel strength of less than 1,000 grams per inch as claimed in claims 1, 48 and 91. However, as the Examiner can see, although the peel properties passed the test set forth in column 14, i.e. the film of Comparative Example 2-B was neither stretched nor broken and was thus designated by "AA." However, Comparative Example 2-B did not pass the peel traces test. In other words, the film after being heat sealed and peeled left angel hair or traces of the adhesive on the substrate. The reason for this, of course, is that the sealing strength was only 5.7 N/15mm (959 grams per inch), and when such a non-tacky but soft composition is heat sealed at a temperature of 170 °C at a pressure of 0.2 MPa for one second (as described in column 14, lines 15-22), the composition essentially melts. Although such a composition can be peeled, it leaves peel traces, i.e. angel hair on the substrate from which it is peeled. Thus, Inoue et al indicates at column 14, lines 65-67 that Comparative Example 2-B did not meet the requirements of sealing strength, easy peel and no peel traces. Thus, Inoue et al is essentially teaching one skilled in this art not to utilize a composition having such low sealing strength, even when heat sealed, because any attempt to

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peel such a composition away would result in a film having angel hair or peel traces left on the substrate.

It should be noted that there is nothing in Inoue et al that discusses auto-adhesive surfaces, or cling-to-cling fastening systems as disclosed and claimed by applicant. Inoue et al is directed toward a composition that is heat sealed to provide a container for packaging items such as food products. In contrast, applicant is claiming a cling or auto-adhesive surface which has relatively low peel strength, but relatively high shear strength for use as a fastening system for items such as disposable diapers, feminine napkins, surgical drapes, hospital gowns, hospital pads, tape and the like. There is nothing in Inoue et al which would suggest to one skilled in the art that a composition that is heat sealed to provide high initial sealing strength and easy peel strength would also be applicable to goods such as those which require low peel strength and high shear strength properties.

There is simply no motivation to combine what is taught in Inoue et al with what is taught in Chen et al. In fact, even if one did combine what is taught in Inoue et al with Chen et al, one would not arrive at Applicant's invention, as now claimed in claim 1 because claim 1 requires cling film layers having a peel strength of 600 grams per inch or less and a shear strength greater than four hours, and neither of these requirements were desired in Inoue et al. In fact, such compositions were specifically stated as being undesirable by Inoue et al. As a result, even if one looked at Inoue et al for guidance, one skilled in the art would not have incorporated undesirable compounds (as taught by Inoue et al) into Chen et al. Thus, Applicant believes a combination of Chen et al and Inoue et al is not appropriate to render the claimed invention obvious.

In the Office Action, claims 1-3, 5-11 and 67-70 were provisionally rejected on the grounds of non-statutory obviousness type double patenting as being unpatentable over the claims of co-pending application no. 10/981,046 and 10/867,438 in view of Mann et al U.S. 5,085,655. In response, Applicant states it will file an appropriate Terminal Disclaimer to obviate these double patenting rejections upon the indication of allowable subject matter by the Examiner in the present patent application.

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An effort has been made to place this application in condition for allowance and such action is earnestly requested.

Respectfully submitted,

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